



ICO call for views on a data protection and journalism code of practice

Response of ITV plc

ITV welcomes the opportunity to comment on the transition from the ICO's current guidance for the media to a new code of practice. The existing guidance addresses many of the areas where journalists and other programme makers encounter data protection law. The purpose of ITV's submission is to set out our broad views, reflecting our position as both a public service broadcaster and programme producer, and the range of our output.

In particular, we hope that any new ICO code will recognise as its starting point the particular importance of freedom of expression in British cultural and political life, and the role of the broadcaster in maintaining the public's right to receive and impart information and ideas, and to hold opinions.

We recognise that the data rights of individuals and the right to freedom of expression and publication in the public interest are already enshrined in domestic law. Therefore, in line with s124 (1) of the Data Protection Act 2018 (the 'Act'), we would wish the ICO to prepare a code that is not prescriptive and does not introduce an additional layer of rules, but instead provides practical guidance on good practice, applicable to the modern media world.

We appreciate that the ICO recognises that it is not a specialist media regulator and its job is not to usurp other regulators' roles, and that the current guidance recognises that broadcasters are regulated by Ofcom, which has detailed rules and sanctions to safeguard the public, viewers and contributors.

Section 1: Your views on the code

- 1. We are considering using our current guidance "Data protection and journalism: a guide for the media" as the basis on which we will build the new journalism code. Do you agree or disagree with this approach?**

We agree.

- 2. If you disagree, please explain why?**

N/A

- 3. "Data protection and journalism: a guide for the media" is split into three sections:-**

"Practical guidance" aimed at anyone working in the journalism sector;

"Technical guidance" aimed at data protection practitioners within media organisations; and

"Disputes", aimed at senior editors and staff responsible for data protection compliance.

Do you think we should retain this structure for the code?

Yes.

4. If no, do you have any suggestions about how we should structure the code?

N/A

5. Do you think the ICO's existing guidance for journalists addresses the main areas where data protection issues commonly arise?

There are a number of principles and parts of the existing guidance that we believe are helpful in protecting responsible journalism in the public interest and that we believe should be retained and in some instances expanded on in the new code of practice.

These include the recognition that there are few hard and fast rules and the main principles of the Data Protection Act 1998 (the 'DPA') are flexible enough to accommodate day-to-day journalism; the DPA does not prevent journalists from retaining useful information; the DPA allows for protection of the privacy of sources, and individuals need not be notified their data is being collected if it would undermine the journalistic activity or it is not practical.

Importantly, the ICO does not have to agree with the broadcaster or publisher that publication is in the public interest, and the media is given significant leeway to decide what is in the public interest.

In the current guidance, when handling DSARs, information about third parties (including sources) can be redacted and the journalism exemption can apply to DSARs made before or after publication. It states that the journalism exemption can apply to retention and publication of a full online news archive. It also states that compliance with industry codes will go a long way to ensure compliance with the DPA.

The current guidance recognises that a media organisation does not need to be aiming to publish the personal data in question at that time for that particular story to be able to benefit from the journalism exemption; the exemption can protect the media before and after publication; there is an inherent public interest in freedom of expression and a free and independent media, a public interest in the full range of media output and the importance of undercover investigations and unauthorised leaks in major public interest stories; and that the 'special purposes' are interpreted broadly and are likely to cover everything broadcast on television.

Clearly, 20 years after the DPA, the media landscape is very different and other issues will need to be considered.

6. If no, what additional areas would you like to see covered?

Section 124 of the Act requires a code that provides guidance for the 'journalism'. ITV's output includes news, current affairs, consumer affairs and sport, but also entertainment programmes, factual programmes, children's programmes, drama, advertising, sponsorship, marketing and social media and internet content. Even where some of this output might not be considered 'journalism', we believe it is covered by the 'artistic and literary purposes' of the 'special purposes'.

We would welcome the code setting out how the exemption covers all of the 'special purposes', which are found in journalism, art or literature.

We would welcome explicit recognition of the wide range of functions that are included in processing with a view to publication in the public interest as it relates to broadcasting, such as interviewing and selecting contributors, retaining profiles and contact details, filming in public and in private, retaining filmed material ('rushes'), researching and responding to complaints and maintaining programme archives.

We would welcome a flexible approach that recognises the demands of the current media environment as a result of the speed of information delivery and turnaround, and affords the necessary protection to editorial decision-making in a fast-moving editorial environment. For example, a newsroom with several broadcasts a day plus online articles to publish, will handle a myriad stories - recorded, broadcast or rejected - and will inevitably ingest and retain personal data 'with a view to publication' without keeping contemporaneous records of how and why the information has been processed. We would like to see recognition that a specific requirement for the recording of editorial decisions in such circumstances is impractical and disproportionate, and places an unreasonable burden on a team with limited financial and human resources.

In considering the data controller's reasonable belief that publication would be in the public interest, we expect that the guidance will recognise the importance of the editorial discretion of the individual decision-maker in the particular circumstances in which the editorial decision was made.

We would welcome specific recognition that the journalism exemption can be relied upon by third parties, such as whistle blowers, expert contributors, confidential sources and others who disclose personal data to the media.

7. The journalism code will address changes in data protection law, including developments in relevant case law. Are there any particular changes to data protection law that you think we should focus on in the code?

We expect that the new code will address the removal of the word 'only' from "*the processing of personal data carried out for the special purposes*" in

paragraph 26(2) of Schedule 2 Part 5 of the Act, and acknowledge the very broad range of functions involved in processing for the special purposes. For a broadcaster, these include but are not limited to: filming in public and private; selecting contributors and retaining personal details; researching items and individuals which may or may not ultimately be published; retaining rushes, notes, contacts, communications within the organisation and to third parties; retaining information in case of complaints; investigating and responding to complaints; and maintaining an archive of programme material.

We expect there will be recognition that archive material, including television news and programme archive is specifically protected by the exemption. Recital (153) to the GDPR provides that *"The processing of personal data solely for journalistic purposes, or for the purposes of academic, artistic or literary expression should be subject to derogations or exemptions from certain provisions of this Regulation if necessary to reconcile the right to the protection of personal data with the right to freedom of expression and information, as enshrined in Article 11 of the Charter. This should apply in particular to the processing of personal data in the audiovisual field and in news archives and press libraries"*.

8. Apart from recent changes to data protection law, are there any other developments that are having an impact on journalism that you think we should address in the code?

Please see our answers to Questions 5, 6 and 7 above.

9. Are there any case studies or journalism scenarios that you would like to see included in the journalism code?

We believe the code should be principles-based and not overly detailed or prescriptive. We feel it should not include case studies, which will be of limited use given that real-life scenarios are often much more complicated and nuanced.

10. Do you have any other suggestions for the journalism code?

Not at this time. We will look forward to commenting further and in more detail when the ICO publishes a draft of the new code.

Section 2: About you

11. Are you?

A media organisation.

ITV is an integrated producer broadcaster, creating and distributing high-quality content on multiple platforms globally.

12. How did you find out about this survey?

· ICO website

We may want to contact you about some of the points you have raised. If you are happy for us to do this please provide your email address:

[Redacted]